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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/996,161	11/27/2001	Sunil Puria	RXSD 1022-1	2113
22470	7590	01/27/2005		
HAYNES BEFFEL & WOLFELD LLP P O BOX 366 HALF MOON BAY, CA 94019			EXAMINER PATEL, DHAIRYA A	
			ART UNIT 2151	PAPER NUMBER

DATE MAILED: 01/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/996,161	Applicant(s) PURIA ET AL.	
	Examiner Dhairya A Patel	Art Unit 2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/11/2002, 02/12/02, 11/27/01</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Application # 09/996,161 was filed on 11/27/2001. Claims 1-33 are subject to examination.

Claim Rejections - 35 USC § 112

2. Claims 10,20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims recite “..sending first data..” and “..sending second data..” It is unclear to the examiner, which first data and which second data is applicant is claiming. Nowhere in the independent claim 1, “first data” and “second data” are recited.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-2,4,8,10,11,12,14,15,18,20,21,22,25,27,28,29,32 are rejected under 35 U.S.C. 102(e) as being unpatentable by Horn et al. U.S. Patent # 6,379,314 (hereinafter Horn).

As per claim 1, Horn teaches a method of testing the hearing of a user utilizing a computer system, the computer system including a computer and a speaker, the computer operable to generate an electrical signal and then to output the electrical signal to the speaker, the speaker operable to convert the electrical signal into a stimulus, the method comprising: a) downloading a computer program from a server to the computer (column 6 lines 14-16, lines 23-27); b) executing the computer program on the computer (column 6 lines 14-16, lines 23-32); c) generating a stimulus, the stimulus having a first sub-stimulus and a second sub-stimulus, the first sub-stimulus being within the audible range of humans, the second sub-stimulus being outside of the audible range of humans (column 7 lines 31-45); and d) receiving an input from the user that indicates that the user heard the stimulus (Column 6 lines 35-42)

As per claim 2, Horn teaches the method of claim 1, wherein the act of downloading the computer program includes transferring the computer program from the server to the computer via the Internet (column 5 lines 54-65).

As per claim 4, Horn teaches the method of claim 1, wherein the act of generating a stimulus includes generating a stimulus from an audio stream that utilizes a larger number of bits to represent the stimulus than would be utilized to represent the first sub-stimulus (column 7 lines 58-63).

As per claim 5, Horn teaches the method of claim 1, wherein the act of generating a stimulus includes generating a stimulus having a first sub-stimulus and a second sub-stimulus, the first sub-stimulus having amplitude that is smaller than the amplitude of the second sub-stimulus. (Column 7 lines 17-30)

As per claim 8, Horn teaches the method of claim 1, wherein the act of generating a stimulus includes generating a stimulus having a first sub-stimulus and a second sub-stimulus, wherein the second sub-stimulus includes white noise. (Column 7 lines 31-44)

As per claim 10, Horn teaches the method of claim 1, further including: e) sending first data to the server (column 4 lines 57-67); f) qualifying the hearing of the user (column 4 lines 46-56); and g) sending second data to the computer (column 4 lines 57-67).

As per claim 21, Horn teaches a program storage device that contains computer readable instructions that, when executed by a computer system having a volume control, tests the hearing of a user by: a) setting the volume control of the computer (column 6 lines 65-67) (column 7 line 1); b) generating a stimulus, the stimulus having a first sub-stimulus and a second sub-stimulus, the first sub-stimulus being within the audible range of humans, the second sub-stimulus being outside of the audible range of humans (column 7 lines 31-45); and c) receiving an input from the user that indicates that the user heard the stimulus (Column 6 lines 35-42).

As per claims 11,12,14,15,18,20 teaches same limitations as claims 1,2,4,5,8,10 respectively, therefore rejected under same basis.

As per claims 22,25, teaches same limitations as claims 5,8 respectively,
therefore rejected under same basis

As per claims 27,28,29,32 teaches same limitations as claims 21,4,5,8
respectively, therefore rejected under same basis.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all
obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3,13 are rejected under 35 U.S.C.103(a) as being unpatentable over Horn et al. U.S. Patent # (hereinafter Horn) in view of "Official Notice"

As per claim 3,13 Horn teaches the method of claim 1, wherein the act of downloading the computer program includes transferring the computer program from the server to the computer but is silent on teaching via an email. "Official Notice" is taken as to transferring of program from server to computer via email is old and well known in the art. The motivation for doing so would have been to have a copy of program and transfer using email and by attaching it in the email rather than copy it on a computer readable medium.

5. Claims 6,16,23,30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horn et al. U.S. Patent # (hereinafter Horn) in view of Davis et al. U.S. Patent 6,201,875 (hereinafter Davis)

As per claims 6,16,23,30, Horn teaches the method of claim 1, wherein the act of generating a stimulus includes generating a stimulus having a first sub-stimulus and a second sub-stimulus, but is silent on teaching the first sub-stimulus includes a Warble tone. Davis teaches first stimulus includes a warble tone. (Column 4 lines 58-67) (Column 5 lines 1-5). It would have been obvious at the time of applicant's invention to implement Horn's invention in Davis's invention to come up with stimulus, which includes a warble tone. The motivation for doing so would have been because to use the frequency and loudness of the tone to test for hearing loss.

6. Claims 9,19,26,33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horn et al. U.S. Patent # (hereinafter Horn) in view of Gleeson III et al. U.S. Patent # 4,902,274 (hereinafter Gleeson)

As per claims 9,19,26,33, Horn teaches the method of claim 1, wherein the act of generating a stimulus includes generating a stimulus having a first sub-stimulus and a second sub-stimulus, but is silent on teaching second sub-stimulus includes pink noise. Gleeson teaches second sub-stimulus includes pink noise. (Column 2 lines 22-27). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to implement Horn's invention in Gleeson's invention to come up with second sub-stimulus includes pink noise. The motivation for doing so would have been because pink noise is a variation of white noise and pink noise when heard has a very soothing effect such as ocean surf which can be used for hearing test.

7. Claims 7,17,24,31 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Horn et al. U.S. Patent # (hereinafter Horn) in view of Priddy et al. U.S. Patent 5,774,216 (hereinafter Priddy)

As per claims 7,17,24,31, Horn teaches the method of claim 1, wherein the act of generating a stimulus includes generating a stimulus having a first sub-stimulus and a second sub-stimulus, but is silent on teaching the second sub-stimulus includes a dithering signal. Priddy teaches second stimulus includes a dithering signal. (Column 1 lines 35-43) It would have been obvious at the time of applicant's invention to implement Horn's invention in Davis's invention to come up with stimulus, which includes a dithering signal. The motivation for doing so would have been output due to using dithering signal would be zero.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

A). "Internet System for testing Hearing" by Horn U.S. Patent 6,379,314

B). "RLG Dither noise injection by means of Reference modulation" by Priddy
U.S. Patent 5,774,216

C). "Hearing Aid fitting System" by Davis U.S. Patent 6,201,875

D). "Multiple Afferent sensory stimulation Device" by Gleeson III U.S. Patent
4,902,274

8. A shortened statutory period for response to this action is set to expire **3 (three)**

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months and 0 (zero) days from the mail date of this letter. Failure to respond within the period for response will result in **ABANDONMENT** of the applicant (see 35 U.S.C 133, M.P.E.P 710.02, 710.02(b)).

9.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dhairya A Patel whose telephone number is (571) 272-4066. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on (571) 272-3939. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DAP


ZARNI MAUNG
ASSISTANT PATENT EXAMINER